Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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No. 87-1892

IN THE

Supreme Court of The United States

October term 1987

GLADYS COK
Appellant
v.
LEO COK
Appellee

OBJECTION TO MOTION TO DISMISS

Dr. Gladys Cok
Pro-Se
1082 Greenwich Avenue
Warwick, Rhode Island
Tel. 401-738-0767

QUESTION PRESENTED

I.
PETITIONER'S QUESTIONS

Petitioner's question is whether the mandates of section 1446(e) that once a matter has been removed from the trial court to the U.S. district court, action in the state court ceases at the point the removal is effected, and jurisdiction of the case is transferred to the district court when:

1. Petitioner is a court watcher who has volunteered time, money, and talent to bring a case and controversy to the courts for the purpose of bringing the attention of both Bench and Bar to glowing wrongs within their own system.

2. Respondents are two retired justices, one active judge, two lawyers who have been cloaked with a mantle of absolute, sovereign and judicial immunity relieving them of all liability for any damage, libel or slander of property or person owed by them to petitioner; and the clerk of the trial court who threw petitioner's removal notice in the waste basket saying that the trial court deferred to no one — including the federal court, that the trial court — in this case a family court — was itself the alpha and omega of the Law. This same sentiment was echoed for the record by one of the judges.

Petitioner if of the opinion that in a removal matter, both the bench and bar should respect and honor the plain language of the law. Section 1446(e) (1982) of title 28 says that "Promptly after the filing of a petition for the removal of a civil action and bond, the defendant shall give written notice thereof to the adverse parties and shall file a copy of the petition with the clerk of such state court, which shall "effect" the removal and the State court shall proceed no further".

II
RESPONDENTS QUESTIONS

Respondents admit petitioner's removal from the trial court to the district court, and they admit knowledge that section 1446(e) (1982) says that once a matter is removed from the state court to the district court that the "District Court has exclusive jurisdiction over the case". As examples they refer to Mr. Berberian's challenge in 1975, and Mr. Cavanagh's challenge in 1977. Both men were active court watchers.

Their question is whether they being who they are, and the courts of Rhode Island being ruled and controlled by Discretionary Law, rather than common law, and even constitutional law, "Are they laiable to follow the plain language of statutory law as far as section 1446(e) (1982) goes, or may they continue to interprete the law as they see fit?

1. In this matter, they feel that although they do not question petitioner's removal, and do not question that exclusive jurisdiction is transferred to the district court once a removal is effected, they feel that petitioner did not fulfill the requirements of sections 1441 et seq. when she filed her removal papers, and that therefore "there was no removal and the trial court never lost jurisdiction.

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TABLE OF AUTHORITIES

CONSTITUTIONS

Article VI. Cl.2

STATUTES

Title 28 USC 1441 et seq.
Title 28 USC 1446
Title 28 USC 1446(a)
Title 28 USC 1446(e)

PUBLIC LAWS

Act of March 31, 1875, C 137, 18 Stat 470

CASES

Allman vs Hanley, 302 F2d 559 (5th Cer 1962)

Beecher vs Wallace, 381 F2d at 373 (1947)
Boudrant vs Watson, 103 U.S. (13 OTTO) 281, 287-88 (1880)
Burlington R.R. vs Dunn, pp516-17, Oct. term 1886

Cavanagh vs Cavanagh, 380 A2d 964 (RI 1977)

Cok vs Cok, 533 A2d 534 (R.I. 1987)

Davis vs Weschsler, 263 U.S. 22, 24; 44 S. Ct., 13, 14; 68 L. Ed 143

Hyde Park Partners vs Connolly, 839 F2d 837, 841 (1988)

N.Y.C.R. Co vs Penn Central Investment, 271 U.S. 124, 126-7; 46 S. Ct. 447; 70 L Ed 865 (1926)

Polyplastics, Inc vs Trancconex Inc. 713 F2d 875, 880 L 1st Cer. (1983)

Steamship Co. vs Tugman, 106 U.S. 118, 1 S. Ct. 58,60; 27L Ed 87 (1882)

STATEMENT OF THE CASE

Dr. Gladys Cok is the Petitioner. She is the vice-President of the Court Watchers of Rhode Island. Her case is the prime case in Rhode Island cataloging more than 50 excessives and abuses by the Trial Court.

1. Need changing
2. Need reviewing
3. Need public exposure

She is appealing to this court the refusal of the Rhode Island court system to adhere to, accept and follow the Laws and Constitution of the United States which they swore to uphold and follow in their oaths of office.

1. The courts in Rhode Island have chosen to follow and accept "Discretionary Law" as the Law of the State. The Discretionary Law they follow is of their own making — often times they make it of their own making — often times they make it up as they go along.
2. Often, they don't even follow their own laws, changing them to fit the exingency of the moment.
3. Professor Dershowitz of Harvard documented the abuse of Law in Rhode Island, calling it the Rhode Island shuffle.
    A. Dr. Cok has documented Professor Dershowitz's findings with facts, and case history.

The appeal concerns the constitutionality of the action of the Supreme court of Rhode Island in rejecting the plain, unconverted and unambiguous language of Title 28 USC 1446(e) that states that once a matter is removed to the federal district court from a state court all action in the state court stops, and any actions taken during the Removal is null and void.

1. The Supremacy Clause (Article 6, paragraph 2) clearly states:

> "This Constitution, AND THE LAWS OF THE UNITED STATES which shall be made in Pursuance thereof... under the Authority of the United States, shall be the supreme Law of the Land; and the Judges IN EVERY STATE shall be bound thereby; anything in the Constitution or Laws OF ANY STATE TO THE CONTRARY NOTWITHSTANDING".

2. The Statute itself (28 USC 1446(e) says:

> "Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State COURT SHALL PROCEED NO FURTHER unless and until the case is remanded.

In 1977, Robert Cavanagh, a member of an earlier group of Court Watchers, of which I am the vice-President, brought a case very similar to mine, in which "The R.I. Law of the Case" was decided (380 A2d 964) by the Supreme Court in favor of the clear, undisputed and unambigous language of the statute.

1. Judge Paolino speaking for the majority said:

> "(1) Orders of state court entered whild petition for removal was pending in federal court were void, even though federal court determined that removal petition was ineffective.
>
> "(2) where papers had been transmitted to Supreme Court and appeal had been docketed, Family Court had no authority to act on motion seeking sale of property and decrees it entered for sale were void."
>
> "Once removal procedure has been carried out, action in state court is automatically stayed and any proceedings there prior to federal remand order are absolutely void, despite subsequent determination that removal petition was ineffective (28 USC 1446)."

The same thing is said in Beecher v Wallace, cited as 381 F2d at 373 (1947) where the court said:

1. "The state court process becomes null and void on the date the action is removed to the federal court. (Cf 28 USC 1446(a); Allman v Hanley, 302 F2d 559 (5th Cir. 1962)

The Supreme Court in its October Term in 1886 ruled that a case cannot be in two courts at the same time. The case is Burlington R.R. v Dunn (pg. 517 Opinion).

"Inasmuch as the petitioning party has the right to enter the suit in the Circuit Court, notwithstanding the state court declines to stop proceedings, it is easy to see that if both courts can try the issues of fact... the records from the two courts brought her for review will not necessarily always be the same.

"Such a state of things should be avoided if possible, and this can only be done by making one court the exclusive judge of the facts."

"It must rest with one court alone, and that, ... is more properly the Circuit Court."

HOW THE FEDERAL QUESTION WAS PRESENTED

The Federal Question "whether the plain wording of Title 28 USC 1446(e) ruled when a matter was Removed from the state court to the Federal court for the district" was addressed from the moment of Removal to the Opinion of the R.I. Supreme court on November 17, 1987.

Interestingly, none of the appellees deny the existence of the Removal. They just say that the plain language of the Removal statute pursuant to Title 28 USC 1446(e) doesn't mean anything to them, regardless that the removal is still docketed in the district court for Rhode Island.

The attitude can best be expressed by the report of the actual findings and reply of the trial court to the Removal. The Removal will be found in the Appendices of the original brief page.

STATE OF RHODE ISLAND FAMILY COURT
KENT, SC.

GLADYS L. COK :

v. : F.C. No. K79-0343

LEO COK :

REPORT AND ACCOUNTING OF COMMISSIONER, 10/5/84 THROUGH 3/19/87

Upon notification that Mr. Chernick and the undersigned had been so appointed, we reviewed the Family Court files. Shortly thereafter, we were notified by plaintiff that the case had ostensibly been removed to the U.S. District Court for the District of Rhode Island and that were we to do anything with any of the properties, we would be subjected to suit. Mr. Chernick and the undersigned thereupon researched the file in the U.S. District Court, ascertaining at least initially that jurisdiction of the Family Court had been suspended or ousted pending determination of the validity of plaintiff's attempted removal. Notwithstanding this, however, the commissioners were notified by Mr. Justice Fay to proceed with the sale of the subject properties.

INTRODUCTION

Rhode Island and Massachusetts have a very real problem, and that is that the courts of both states have become to believe that under "Discretionary Powers" they no longer have to follow the laws that limit their powers, their jurisdiction, and their discretion.

In Massachusetts, the first circuit in April of this year in a Massachusetts case: Hyde Park Partners vs Connally, 839 F2d 837 (1988) told the Massachusetts courts that the peculiar mandates found in section 1446(e) (1982) of title 28 USC was designed to focus attention of the courts on the deference and balance state courts owe federal courts, and the importance and necessity of federal courts of this deference and balance to the people of the United States who look to the federal courts for relief to avoid the strictures of their state courts, and their states.

The history of America has been a history of people using section 1446(e) of title 28 for relief from possible and otherwise inescapeable state tyranny.

A. See Steamship vs Tugman, 106 U.S. 118; 1 S.Ct 58, 60; 27 L.Ed. 87 (1882)

B. Bondurant vs Watson, 102 U.S. (13 OTTO) 284, 287-8, 26 L.Ed. 447 (1880)

C. Burlington R.R. vs Dunn, page 577 Opinion 1886

D. Weschsler, 263 U.S. 22, 24; 44 S.Ct. 13,14; 68 L.Ed 143 (1923)

E. N.Y.C.R. vs Penn Central Investment, 271 U.S. 124, 127; 46 S.Ct. 4470; 70 L.Ed 865 (1926)

F. Beecher vs Wallace, 381 F2d at 373 (1947)

G. Cavanagh vs Cavanagh, 380 A2d 964 (1977)

H. Polyplastics Inc. vs Transconex, Inc., 713 F2d 875, 880 (first Circuit, 1983)

I. Hyde Park Partners vs Connolly, 839 F2d 837 (1988) (first circuit).

In conclusion, we conclude that the deference of the State to the federal court pursuant to section 1446(e) of title 28 U.S.C. is essential for the proper balance to exist between state courts and federal courts.

ARGUMENT

I.

The question brought by both the petitioner and the respondents is whether title 28 USC 1446(e) (1982) means what the straight forward language of the statute says — or not. If the statute means what it says, then 1446(e) (1982) says that "once a case has been 'removed' from the state court to the district court of that state, and the 'removal' has been "effected" by a proper filing, posting of a bond, notice given to all adverse parties, and a copy of petition filed with the clerk of the trial court, then, at that point:

- The state court shall proceed no further unless and until the case has been remanded and certified back to the trial court.
- The jurisdiction of the state court absolutely ceases, and that of the federal court immediately attaches.
- Any subsequent hearings, orders, mandates, memorandums, ex-parte orders, contempt citations, jailings, threats, acceptances of open perjury by respondents, orders establishing a slush fund of $80,000 to be distributed at the discretion of the judge to allow her to purchase at the top price, two pieces of property belonging to her and her ex-husband jointly, is 'coram non judice', even if its is eventually determined that the removal was improper.
- That all subsequent hearings and orders of the trial court are void "ab initio", where the matter has not been remanded and certified to the trial court.
- That, even if the district court later decides that the "Removal" is improper, orders of the trial court made previously are of no legal effect, and are a nullity, because when the case was removed to the district court the jurisdiction over the case was transferred to that court at that time.

The question of the deference of state courts to federal courts seem to be widespread in the circuits, as is evidenced by the first circuit in a Massachusetts case (Hyde Park Partners vs Connolly, 839 F2d 837 (1988)) decided and reported in the April 4, 1988 Federal Reporter.

In that case, which is on point with petitioner's case, the first circuit found that the proper balance and deference due between the federal and state courts was to be found in the peculiar mandates of section 1446(e) of title 28 USC. The first circuit found that the plain language of the statute was important for the recognition, restraints and comity needed between state courts and federal courts. The first circuits findings regarding the peculiar mandates of section 1446(e) (1982) of title 28 USC was that:

1. At that point the removal is effected, pursuant to 1446(e), the jurisdiction of the state court absolutely ceases, and that of the federal court immediately attaches. (See Steamship Co. vs. Tugman, 106 U.S. 118, 1 S. Ct. 58,60; 27 L.Ed 87 (1882).

2. At the point the removal is effected, subsequent hearings and orders of the trial court are void "ab initio". (See Polyplastic Inc. vs Transconex, Inc. 713 F2d 875, 880 (1st Cir. 1983).

3. At the point the removal is effected, the state court has a duty to proceed no further in the case, because every order thereafter made in that court is "coram non judice". (See Tugman, 106 U.S. at 122; 1 S. Ct. at 60 (1882). This is true, according to Tugman, even if it is eventually determined that the removal was improper.

4. Also on point, even if the district court later decides that the removal is improper, the order previously issued by the trial court is of no legal effect. They are a nullity, because when the case was originally removed, jurisdiction of the case was transferred to the federal court. (See Hyde Park, Ibid).

The fact that the case might have been removed to escape the strictures of the state court (which it was) does not alter the law. (See Bondurant vs. Watson, 103 U.S. (13 OTTO) 281, 287, 288; 26 L.ED. 447 (1880). Justice Holmes in 1923 emphasized this in the matter of Davis vs Weschsler, 263 U.S. 22, 24; 44 S.Ct. 13, 14; 68 L.Ed. 143, where he wrote that "Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. (See also N.Y.C.R. vs Penn Central Investment, 271 U.S. 124, 126, 127; 46 S.Ct. 44708; 70 L.Ed. 865 (1926)).

II.

Respondent's main arguement is that if the state court has to follow the stringent Rule and Law as outlined in section 1446(e), and have to recognize that once petitioner removed her case on October 4, 1984, that the jurisdiction of the case was transferred to the district court (the matter was never remanded), and has remained there since, then the Supreme Court of Rhode Island is going to be embarrassed, because their findings in Cok vs Cok, 533 A2d 534 (R.I. 1987) (page 4 of respondents Brief) is that petitioner's 18 appeals and one mandamus claiming jurisdiction of her case was with the federal court will not be as the Supreme Court claimed "repeated, continuous, and frivolous appeals from every decision of the family court (made while the matter is on removal).

While the matter has been removed to the federal courts, the Supreme court has claimed that she is "contumacous and obstrepuous" and must be taught a lesson in deference to the state court — particularly the family courts, which in Rhode Island are absolute, with little or no relief from their dictates in all matters concerning personal and private rights, property, children, etc. To this end they have sought to publicly — as much as possible — strip her of as many of her assets, as much of her money as possible, and take as many of her properties from her as they could.

To this end they have as starters

A. Put me, the appellant, in jail for 15 days until they extorted $2500.00 from me.

B. Threatned me with jail, unless I accepted their open perjury and gave them $2700 the next morning, which I did.

C. Threatned me with jail unless I sign a Warranty deed to my property in Florida to an assignee of Allen Kirshenbaum for $8,000 under an offer made me by a third party.

D. Threatned me with jail unless I lift a Lis Pendans on property of mine in Coventry, R.I., which they sold to an associate of Allen Kirshenbaum for $55,000 under its value.

E. Forced me to put $40,000 into a "slush fund", which Edward Gallogly said would be established to assure that thousands of dollars would be given Allen Kirshenbaum for handling a "contamacuous" and "obstrepterous" litigant for the court.

F. Threatned me not to make any appeals for the thousands of dollars of damage, negligence, and vandalism willfully done to my Real Estate on direct orders of Judge Healey admitted to on the record.

G. Sold one of my properties for about $50,000 under its value to a lawyer, without any orders from the court, and without any accounting to the court.

H. Giving $16,000 of my money being held in the Registry of the court to Louis Cosentino for being the court ordered Guardian Ad Litem. He spent approximately 4½ hours in counseling my son.

I. Giving $15,000 of my money to an associate of Allen Kirshenbaum for a non existent Buy and Sell Agreement, and for forcing me, the appellant, to buy my own properties for a premium over what Judge Robinson offered to buy the property for, and what a business associate of Mr. Kirshenbaum intended to buy the other property for.

J. Refusal to give me, the appellant, an accounting of the missing and unaccounted rent and other money collected by Allen Kirshenbaum, as court appointed "Commissioner" who was under court order to protect and preserve appellant's assets and properties, pay bills, mortgages and taxes, etc. (Over $50,000 is unaccounted for).

K. Willful libel and slander of appellant's person and property by allowing several properties to go to Tax Sales although there was thousands of dollars available to pay the taxes; by not paying the mortgage on time, and on one occasion trying to force a mortgagee sale by not paying the mortgage at all, and by deliberately under orders from Edward Healey, allowing appellant's properties to be wasted, neglected, left vacant and open to vandalism, and the elements so as to bring appellant's name and reputation into disrepute with the Minimum Housing, neighboors and the community.

CONCLUSION

For the foregoing reasons. petitioner asks this court to deny respondents motion to dismiss.

Respectfully submitted
Gladys L. Cok
1082 Greenwich Ave.
Warwick, Rhode Island
TEL. (401) 738-0767

APPENDICES

APPENDIX A	This matter was removed to the federal court from the state court on October 4, 1984.
APPENDIX B	This matter is over a book account — not a divorce.

STATE OF RHODE ISLAND FAMILY COURT
KENT, SC.

GLADYS L. COK :

v. : F.C. No. K79-0343

LEO COK :

REPORT AND ACCOUNTING OF COMMISSIONER, 10/5/84 THROUGH 3/19/87

By order of Mr. Justice Fay on October 5, 1984 (Order entered by Macktaz, J. on October 11, 1984), *the late Melvin A. Chernick,* Esquire *and the undersigned were appointed co-commissioners to effectuate the sale of the real estate described in the Decision Pending Entry of Final Judgment (entered on March 19, 1982).*

Upon notification that Mr. Chernick and the undersigned had been so appointed, we reviewed the Family Court files. Shortly thereafter, *we were notified by plaintiff that the case had* ostensibly *been removed to the U.S. District Court for the District of Rhode Island and that were we to do anything with any of the properties, we would be subjected to suit. Mr. Chermick and the undersigned thereupon researched the file in the U.S. District Court, ascertaining at least initially that jurisdiction of the FamilyCourt had been suspended or ousted pending determination of the validity of plaintiff's attempted removal. Notwithstanding this, however, the commissioners were notified by Mr. Justice Fay to proceed with the sale of the subject properties.*

UNITED STATES DISTRICT COURT — RHODE ISLAND

Dr. Gladys Cok :

v. : CA84-0543

Louis J. Cosentino

NOTICE OF REMOVAL

To the Clerk of the Family Court of and for the State of Rhode Island.

This is to certify that on October 4, 1984, the following matter was removed to the Federal Court for the District of Rhode Island.

The following papers were filed:

1. Petition for Removal
2. Bond
3. Memorandum of Law
4. A copy to the clerk of the Family Court
5. A copy to Louis Constantino
6. Copies of these papers are attached here to

Dr. Gladys Cok
1082 Greenwich Avenue
Warwick,
Rhode Island
TEL. (401) 738-0767

The Law is very clear about the fact that once a matter is removed to the federal district court for the district in which the state court is located, jurisdiction is removed to the federal court from the state court. The landmark case is this court's own decision in Cavanagh v Cavanagh. Following is a copy of the court's decision regarding Removals under Title 28 USC section 1446(e)... (Cavanagh's case).

964 R.I. 380 ATLANTIC REPORTER, 2d SERIES

STATE OF RHODE ISLAND FAMILY COURT
KENT, SC.

GLADYS L. COK :

v. : F.C. No. K79-0343

LEO COK :

ORDER

This matter came on for hearing before this Honorable Court, Mr. Justice Najarian presiding, on November 13, 1984 on the following pleadings:

The Court notes that it appeared that the earlier removal of the instant action to the United States Federal District Court, in an action docketed therein as Civil Action No. 84-0543S, had been remanded to this Honorable Court and the Court orders a copy of that Order filed in the papers of the instant case, noting that the certified copy from the Clerk of the said Federal District Court had not yet arrived in this Court, but that there

Dated at Providence, Rhode Island this day of November 1984.

APPROVED: _____

ENTERED: _____

PRESENTED BY: Allen M. Kirshenbaum

CERTIFICATION

I, Pamela Trevitt, hereby certify that I mailed an exact copy of the within Order to Melvin A. Chernick, Esquire, 1114 Fleet National Bank Building, Providence, Rhode Island, Louis J. Cosentino, Esquire, 58 Weybosset Street, Providence, Rhode Island, Leo Cok, M.D., 307 Greenwich Avenue, Warwick, Rhode Island 02886 and to Gladys L. Cok, Ph.D., 1082 Greenwich Avenue, Warwick, Rhode Island 02886 on November 16, 1984.

Pamela Trevitt

LOUIS J. COSENTINO
ATTORNLY AT LAW
58 WEYBOSSET STREET
PROVIDENCE R I 02903
421-1011

May 6, 1983

Gladys Cok
1082 Greenwich Avenue
Warwick, Rhode Island

Court Ordered Fee Payable on or before September 18, 1980.

$2,400.00

LOUIS J. COSENTINO
ATTORNEY AT LAW
58 WEYBOSSET STREET
PROVIDENCE, R I 02903

Gladys Cok
1082 Greenwich Avenue
Warwick, Rhode Island